Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 17 JANUARY 12, 1983 No. 2

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 83-6)

Bonds

Approval of a Carriers Bond, Customs Form 3587

A bond of a carrier for the transportation of bonded merchandise has been approved as shown below. The approval of the bond is temporary until January 20, 1983.

Dated: December 23, 1982.

Name of principal and surety	Date of Bond	Date of approval	Filed with district director/area director/amount
Intercoastal Trucking Inc., 8000 Market St., Suite 200, Houston, TX; motor carrier; Old Republic Ins. Co.	Nov. 26, 1982	Dec. 15, 1982	Houston, TX $140,000

BON-3-03

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

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19 CFR Part 7

(T.D. 83-7)

Customs Regulations Amendment Relating to Articles Imported From Insular Possessions of the United States Other Than Puerto Rico

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that articles valued at $100 or less coming directly into the United States from an insular possession of the United States other than Puerto Rico may be admitted free of duty pursuant to the

Tariff Schedules of the United States, without certain specified accompanying documentation. The current regulation provides for this treatment for articles valued at $25 or less. This change will result in a reduction in paper work for both importers and Customs, and will expedite the clearance of passengers' baggage and mail parcels containing products from insular possessions.

EFFECTIVE DATE: Jan. 4, 1983.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Benjamin Mahoney, Entry Procedures and Penalties Division (202-566-5765); Operational Aspects: Eula D. Walden, Office of Cargo Enforcement and Facilitation (202-566-8151); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

General Headnote 3(a), Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202) provides, in part, that articles coming into the customs territory of the United States directly from an insular possession of the United States other than Puerto Rico (Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa), which are the growth or product of any such insular possession, or are manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements), are exempt from duty. It further provides that all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation, which were shipped from the United States without remission, refund, or drawback of such duties and taxes, directly to the insular possession from which they are being returned by direct shipment, are exempt from duty.

Section 7.8(a), Customs Regulations (19 CFR 7.8(a)), provides that when articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of General Headnote 3(a), TSUS, relating to certain articles *produced in the insular possessions,* there shall be filed in connection with the entry, a certificate of origin on Customs Form 3229 signed by the chief or assistant chief Customs officer at the port of shipment, showing that the articles are the growth or product of such possession, or were manufactured or produced in such possession from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain for-

eign materials to the value of more than 50 percent of their total value. A certificate of origin is not required for any shipment valued at $25 or less.

Section 7.8(b), Customs Regulations (19 CFR 7.8(b)), provides that when articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of General Headnote 3(a), TSUS, relating to certain articles *returned to the United States,* there shall be filed in connection with the entry, a certificate on Customs Form 3311, of the district director of Customs at the port from which the articles were shipped from the United States. Section 7.8(b) further provides for a declaration of the shipper of the articles in the insular possession with respect to when the articles were shipped from the United States, and back to the United States. The certificate and declaration requirements of section 7.8(b) are not applicable for shipments valued at $25 or less, or in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment, and that no drawback of duties or refund or remission of taxes was allowed when the articles were shipped from the United States.

Section 7.8(c), Customs Regulations (19 CFR 7.8(c)), provides that when merchandise, excluding any shipments valued at $25 or less, arrives unaccompanied by certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond for the production of any missing document may be accepted by Customs.

Customs has determined that the $25 limit of sections 7.8(a), (b), and (c) should be raised to $100. Due to inflation, the $25 limit is no longer realistic. This change will result in a reduction in paper work for both importers and Customs, and will expedite the clearance of passengers' baggage and mail parcels containing products from the insular possessions.

Section 7.8(d), Customs Regulations (19 CFR 7.8(d)), which relates to the determination as to whether an article contains foreign materials in the value of more than 50 percent of the value of the article for an exemption from duty under General Headnote 3(a), TSUS, must be amended to reflect the fact that the percentage test for watches and watch movements is 70 percent, not 50 percent. General Headnote 3(a), TSUS, was amended to provide for the 70 percent test by Pub. L. 94–88.

Footnote 4 to section 7.8, which set forth previous General Headnote 3(a), TSUS, has been deleted since it is readily available in the TSUS, and its inclusion in the regulations is unnecessary.

In addition, several minor, non-substantive changes are being made to section 7.8.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary because these amendments relieve a burden on the importing public and because they are essentially procedural.

Executive Order 12291

Because these amendments will not result in a "major rule" as defined by section 1(b) of Executive Order 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That act does not apply to any regulation, such as this, for which a notice of proposed rule making is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Drafting Information

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR 7

Customs duties and inspection, Exports, Imports, Insular possessions of the U.S.

Amendment to the Regulations

Part 7, Customs Regulations (19 CFR Part 7), is amended as set forth below.

William von Raab,
Commissioner of Customs.

Approved: December 15, 1982.
Robert E. Powis,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, Jan. 4, 1983 (48 FR 228)]

Part 7—Customs Relations With Insular Possessions and Guantanamo Bay Naval Station

Section 7.8, Customs Regulations (19 CFR 7.8), is revised to read as follows:

§ 7.8 Insular possessions of the United States other than Puerto Rico.

(a) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States (19 U.S.C. 1202), relating to certain articles produced in such insular possessions, there shall be filed in connection with the entry a certificate of origin covering articles shipped from insular possessions (except Puerto Rico) to the United States. The certificate shall be on Customs Form 3229, and shall be signed by the chief or assistant chief customs officer at the port of shipment,[5] showing that the merchandise is the growth or product of such possession, or manufactured or produced in such possession, from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements). A certificate shall not be required for any shipment valued at $100 or less.

(b) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States, relating to certain articles returned to the United States, there shall be filed in connection with the entry the following evidence:

(1) A certificate, on Customs Form 3311, of the district director at the port from which the merchandise was shipped from the United States. No certificate shall be required if the district director is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed on the merchandise by reason of the shipment. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise was shipped from the port at which entry is made and the fact of shipment appears on Customs records, the fact of return shall be noted on the record but the filing of the certificate on Customs Form 3311 shall not be required; and

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[5] Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa are American territory, but not within the customs territory of the United States. Importations into those islands are not governed by the Tariff Act of 1930 or these Customs Regulations. The Customs administration of American Samoa is under the jurisdiction of the Department of the Interior (Office of Territories). The Customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The Customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. The Customs administration of Guam is under the Government of Guam. A certificate signed by the Commander at the Johnston Island Air Force Base, or his assistant, shall be acceptable as proof of origin. Kingman Reef is understood to be uninhabited.

(2) A declaration of the shipper in the insular possession in the following form:

I, ———— of ———— do hereby declare that to the best of my knowledge and belief the articles identified below were sent directly from the United States on ———— 19 ——, to ————, of ————, on (insular possession) the ————, and that the (Name of carrier) articles remained in said insular possession until shipped by me directly to the United States via the ———— (Name of carrier) on ————, 19 ——.

Marks	Numbers	Quantity	Description	Value

Dated at ————, this —— day of ————, 19——.
(Shipper) ————.

The declaration shall not be required in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment.

(c) When merchandise, excluding any shipments valued at $100 or less, arrives unaccompanied by any of the documentation required by this section, or when any other document necessary to complete entry is lacking, a bond for the production of any missing document may be taken on Customs Forms 7551, 7553, or another appropriate form, except that a bond for production of a bill of lading shall be taken on Customs Form 7581.

(d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent (or more than 70 percent with respect to watches and watch movements), a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippines, free of duty), plus the cost of transportation to such insular possession (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), of the article brought into the United States.

(e) A special Customs invoice on Customs Form 5515 shall be required in connection with each shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt

from the requirement of a special Customs invoice under section 141.83 of this chapter if it had been imported from a foreign country, or when the shipment is covered by a certificate of origin provided for in paragraph (a) of this section.

(f) Merchandise may be withdrawn from a bonded warehouse under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), on articles manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on articles manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

U.S. Customs Service

General Notices

19 CFR Part 101

Baudette and Warroad, Minnesota, and Dunseith, North Dakota; Change in Hours of Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed change in hours of service; solicitation of comments.

SUMMARY: This notice solicits public comments on a proposed change in the hours of service currently provided at the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs district. Currently, service at these ports is provided on a 24-hour basis daily by Customs and Immigration and Naturalization Service (INS) personnel. However, recently INS withdrew one inspector at each of these ports for duty elsewhere. Due to budgetary and personnel restraints, Customs cannot now replace the inspectors withdrawn by INS with Customs personnel. Consequently, it is necessary to reduce the operating hours at these ports since Customs staffing is not adequate to continue to provide the necessary coverage on a 24-hour basis. If the proposal is adopted, the new hours would be 9:00 a.m. to 10:00 p.m. daily. The change would enable Customs to obtain more efficient use of its personnel, facilities, and resources.

DATES: Comments must be received on or before March 7, 1983.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. Many offices provide service during hours in addition to those specified in the regulations.

Currently, the Customs ports of entry at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs district, provide service on a 24-hour basis, daily. Customs and Immigration and Naturalization Service (INS) personnel jointly staff a number of ports of entry along the border, including those named above. However, recently INS withdrew one inspector at each of these ports for duty elsewhere. Due to budgetary and personnel restraints, Customs cannot now replace the inspectors withdrawn by INS with Customs personnel. Consequently, Customs finds it necessary to reduce the operating hours at these ports since Customs staffing is not adequate to continue to provide the necessary coverage on a 24-hour basis, daily.

While the proposed change would result in a substantial reduction in the service hours at the affected ports and may result in some inconvenience to the public, these ports would nevertheless remain open beyond the normal business hours set forth in the regulations, and area businesses requiring port service after hours could contact local Customs officials for service which would be provided on a reimbursable basis.

Accordingly, it is proposed to change the hours of service at Baudette and Warroad, Minnesota, and Dunseith, North Dakota, to 9:00 a.m. to 10:00 p.m. daily.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S.

Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 21, 1982.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, Jan. 4, 1983 (48 FR 268)]

(19 CFR Part 175)

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Cigarette Leaf Tobacco

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: Customs has received a petition from a domestic interested party requesting that certain imported leaf tobacco which has been processed by threshing, shredding, and other acts of manipulation, be classified for tariff purposes, at a higher rate of duty, under the provision for stemmed cigarette leaf filler tobacco rather than under the general provision for tobacco, manufactured or not manufactured, not specially provided for. This document invites comments with regard to the correctness of the current classification.

DATES: Comments (preferably in triplicate) must be received on or before March 7, 1983.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of flue-cured tobacco, requesting that certain imported tobacco, which has been machine-threshed for use in the manufacture of cigarettes, be classified for tariff purposes by Customs as stemmed cigarette leaf filler tobacco under item 170.35, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The merchandise in question is currently classified by Customs under item 170.80, TSUS, as tobacco, manufactured or not manufactured, not specially provided for. The rate of duty for tobacco classified under item 170.35, TSUS, is

higher than the rate of duty for tobacco classified under item 170.80, TSUS.

The petitioner contends that item 170.80, TSUS, is a catchall classification provision, which is intended to include only tobacco which is not clearly identifiable under a more specific provision. The petitioner claims that the merchandise at issue is identifiable as stemmed cigarette leaf filler tobacco, and thus is properly classifiable under item 170.35, TSUS.

After review of numerous comments received in response to a domestic interested party petition concerning the classification of certain machine-threshed cigarette tobacco, in T.D. 80–132, published in the Federal Register on May 20, 1980 (45 FR 33761), Customs determined that the subject tobacco was neither scrap tobacco nor was it in leaf form, but that it had been processed to the extent that it was considered a partially manufactured product, classifiable under item 170.80, TSUS.

COMMENTS

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the correctness of Customs classification.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a),Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, U.S. Customs Service, However, personnel from other Customs offices participated in its development.

Dated: December 21, 1982.

JOHN P. SIMPSON,
Director, Office of Regulations and Rulings.

[Published in the Federal Register, Jan. 4, 1983 (48 FR 366)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service 1301 Constitution Avenue, N.W., Washington, D.C, 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN, many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of $0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost ($0.15) per sheet of fiche.

It is anticipated that additions to both sets of microfiche will be made quarterly. Requests for subscriptions for the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: December 23, 1982.

B. JAMES FRITZ,
Director, Regulations Control
and Disclosure Law Division.

Date of decision	File No.	Issue
12-3-82	105731	Vessels: coastwise trade law ramifications of non-qualified vessels transporting fish into U.S. territorial waters
12-3-82	542803	Classification: dutiability of certain quota charges paid by the buyer to an exporter who is unrelated to the foreign seller and where such charges are not remitted by the exporter to the seller
11-22-82	542881	Classification: license fees and royalties, not qualifying as assists, are not includable in computed value
11-9-82	542929	Classification: relationship of seller to agent irrelevant in determining whether transaction value will be acceptable
6-29-82	803132	Classification: utility holder for mops and brooms (654.00)
9-14-82	803326	Classification: fermin yeast autolysate (182.40)
11-22-82	804499	Classification: musical pillow (725.50)

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 82-116)

ROQUETTE FRERES and ROQUETTE CORPORATION, PLAINTIFFS *v.* UNITED STATES, DEFENDANT, PFIZER INC., INTERVENOR

Court No. 82-5-00636

Before BOE, *Judge.*

AMENDED ORDER

(Dated December 17, 1982)

BOE, *Judge:* In its order in the above-entitled action under date of December 13, the court has made available for examination certain confidential documents and/or portions thereof contained in the record of the antidumping proceedings conducted by the International Trade Administration (ITA) and the International Trade Commission (ITC).

Due to inadvertence, similar treatment relating to the availability of particular information was not accorded to identical information included in separate documents contained in the administrative records, now therefore, it is hereby

ORDERED that prior order of this court under date of December 13 be and is hereby amended as follows:

> In Confidential Document No. 63 all information contained in table 4, page A-23 and in table 5, page A-25 shall be protected from disclosure, provided however, the aggregate totals of the domestic production of all forms of sorbitol contained in said statistical tables shall be made available.

(Slip Op. 82-117)

UNITED STATES STEEL CORP., REPUBLIC STEEL CORP., ET AL., PLAINTIFFS *v.* UNITED STATES, ET AL., DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA (COSIPA) AND USINAS SIDERURGICAS DE MINAS GERAIS (USIMINAS), DEFENDANTS-INTERVENORS

Court No. 82-10-01361

Before WATSON, *Judge.*

MEMORANDUM OPINION AND ORDER

(Decided December 20, 1982)

Cravath, Swaine & Moore (*Joseph R. Sahid* of counsel) and the Law Department of United States Steel (*D. B. King* of counsel) for plaintiffs.

J. Paul McGrath, Assistant Attorney General, *David M. Cohen,* Director Commercial Litigation Branch (*Velta A. Melnbrencis* and *Francis J. Sailer,* Commercial Litigation Branch) for the federal defendants.

Arter Hadden & Hemmindinger (*Wilham H. Barringer* and *Arthur J. Lafave III* of counsel) for defendants-intervenors.

WATSON, *Judge:* Plaintiffs have moved for an order declaring the scope of review of this action. The action was commenced under Section 516(a)(2) of the Tariff Act of 1930 (19 U.S.C. § 1516a(a)(2)) to challenge a determination by the International Trade Administration of the Department of Commerce (ITA), under Section 704 of the Tariff Act of 1930 (19 U.S.C. § 1671c) that the countervailing duty investigation of carbon steel plate from Brazil should be suspended. The suspension was based on an agreement between the

394-975 O - 83 - 3

Department of Commerce and Brazil that the latter would offset, by means of an export tax, the entire amount of benefits found to have been conferred by subsidies. The suspension determination was published at 47 Fed. Reg. 39394.

The government apparently takes the extreme position that this review is limited to a review of the determination that the government of Brazil actually agreed to offset completely the amount of the net subsidy. The government is willing to go so far as to say that in the process, the Court may review all relevant underlying factual findings and legal conclusions, but, if this is taken to mean those matters underlying the determination of the fact that Brazil made an agreement, it is difficult to see what substance there is to this gesture. The government does not even concede that the review covers two other matters stated as requirements for suspension of this investigation, namely, that the suspension be in the public interest, and that effective monitoring of the agreement on which it is based is practicable. The flimsy support for this position is evidently the fact that the latter two requirements are stated in a subparagraph of 19 U.S.C. § 1671c which is separate from the subparagraph in which the basic authority to suspend an investigation is stated. The argument is absurd and not worthy of discussion.

The Brazilian intervenors are somewhat more realistic. They are willing to concede judicial review of three issues; conformity to the suspension/notice procedures, the practicability of monitoring the underlying agreement, and whether Commerce has made a determination that suspension is in the public interest.

Plaintiffs contend that the statute gives them a right to contest any factual finding or legal conclusion upon which the determination to suspend the investigation is based. This is taken to include any determination as to the *existence* of subsidies and any determination as to the *amount* of subsidies, all of which enter into the determination that a given agreement will completely offset the subsidies.

Plaintiffs have the correct concept of the judicial review provided in this action.

19 U.S.C. § 1516a(a)(2)(A) expressly provides that "an interested party * * * may commence an action in the United States Court of International Trade * * * contesting any factual findings or legal conclusions upon which the determination is based." The determination to suspend be investigation is one of the determinations referred to immediately thereafter and it is noteworthy that it is placed in the same category as various important final determinations.

Moreover, it is significant that the standard of review stated in 19 U.S.C. § 1516a(b) is not the "arbitrary, capricious or abuse of discretion" one might expect if this were a less consequential and essentially preliminary determination in nature, but rather the more intrusive and demanding standard which calls for the existence of

substantial evidence. That standard is not needed for the parody of judicial review contemplated by the government, or the essentially procedural review conceded by the intervenors.

For immediate practical purposes, suspension is the end of the investigation and was treated as such by Congress. For that reason it was grouped with other final determinations and subjected to a requirement that the decision to suspend be supported by substantial evidence. It is ingenuous to argue, as does the government, that the mere *existence* of an agreement by a foreign government is the only factual and legal basis of such a drastic determination and virtually the only matter for judicial review.

The true basis of a determination to suspend is not simply that assurances of offsets are given, but rather that there are identifiable subsidies and amounts which have to be offset and, if offset, will justify an end to the investigation.

The intervenors raise the point that it is sufficient to have an apparent elimination of the subsidies to the extent that they have been determined in a preliminary way. They argue that the existence and extent of subsidies can be the subject of further administrative proceedings when, as here, a party requests a continuation of the investigation under Section 704(g) of the Act (19 U.S.C. § 1671c(g)). This leads to an argument that plaintiffs must first exhaust their administrative remedies on the question of the existence and amount of subsidies.

Exhaustion of remedies is a useful principle and its application to actions in this Court is specifically expressed in 28 U.S.C. § 2637. However, it is a doctrine which is always subject to considerations of appropriateness; and its use depends on an understanding of the particular administrative scheme involved. *McKart* v. *United States,* 395 U.S. 185 (1968). It is certainly not superior to a specific provision for judicial review of a given determination. For example, the fact that the existence of a subsidy may be further considered on the administrative level does not interfere with judicial review (under 19 U.S.C. § 1516a(a)(1)(B)(ii)) of a preliminary determination by the ITA that a subsidy is *not* being provided under 19 U.S.C. § 1671b(b). In certain instances Congress has allowed a degree of parallelism in the judicial and administrative proceedings and in those instances the latter should not restrict the former.

Aside from the direct and controlling statutory reasons, which are alone sufficient for the scope of this judicial review, there are other considerations.

If the ITA determination involves a decision that certain practice in not a subsidy at all, then that decision would ordinarily be judicially reviewable as a wholly negative determination within the reasoning of *Republic Steel Corp* v. *United States,* 4 CIT—Slip Op. 82-55 (July 15, 1982). In the context of a suspension of the investigation, there is even more reason to review the decision that a certain practice is not a subsidy. Not only is it a negative determina-

tion, but if it is not in accordance with the law, it means that the agreement by the foreign government cannot offset completely the amount of the net subsidy.

Moreover, the effect of the suspension of the investigation is to end the suspension of liquidations of the products under investigation. 19 U.S.C. § 1671c(f)(2)(A). This creates an interim period of vulnerability, which the Court has previously indicated is the precise reason for judicial review of such determinations. *Republic Steel, supra.* In fact, the potential vulnerability is even greater here because there is no suspension of liquidation at all, and the government is taking the position, rightly or wrongly, that there is no time limit on the final determination (although it states that the ITA has advised that a final determination is expected by January 15, 1983). In short, the continuation of the investigation lacks the potency needed to make it a meaningful alternative to judicial review.

For these reasons, the Court holds that judicial review of a determination to suspend an investigation reaches all determinations of fact and law embodied in the preliminary determination to which it relates. All those determinations are subject to judicial review against the standard of whether they are supported by substantial evidence or are otherwise in accordance with the law.

(Slip Op. 82-118)

SPORTSWEAR INTERNATIONAL LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81-9-01261

Before BOE, *Judge.*

Belt loops—Ornamented Wearing Apparel

[Judgment for defendant.]

(Decided December 22, 1982)

Barnes, Richardson & Colburn (Rufus E. Jarman, Jr., at the trial, *Sandra Liss* at the trial and on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General, (*Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch and *Deborah E. Rand,* at the trial and on the brief) for the defendant.

BOE, *Judge:* In the trial of the above-entitled action the sole issue presented for determination by this court is whether two belt loops affixed to the front waistband of women's denim slacks cause the garment to be ornamented wearing apparel.

Upon importation and liquidation the subject merchandise was classified under item 382.0085. TSUS, which provides:

Women's, girls' or infants' lace or net wearing apparel, whether or not ornamented, and other women's, girls', or infants' wearing apparel, ornamented:	
Of cotton:	
Not knit:	
* * * * * * *	
Trousers and slacks:	
Women's	35% ad val.

The plaintiff claims that the subject merchandise is properly classified as non-ornamented wearing apparel under item 382.3347, TSUS, which provides:

Other women's, girls', or infants' wearing apparel, not ornamented:	
Of cotton:	
Not knit:	
Other:	
* * * * * * *	
Trousers and slacks:	
Denim, including brush denim:	
Women's	16.5% ad val.

From the evidence presented at the trial in the instant action the following facts are established:

(1) A belt is worn with pants or slacks (a) for the purpose of holding up the pants or slacks or (b) to serve as an ornament.

(2) The function of belt loops on the waistband of pants or slacks is to hold the belt in place.

(3) The elasticized back of the waistband of the subject merchandise holds the garment in place on the wearer without the need of a belt.

The court is unable to conclude that the two loops attached to the front portion of the waistband of the garment in question are functional in character, as contended by the plaintiff. The subject merchandise has been manufactured with an elasticized waistband designed for the express purpose of causing the jeans in question to closely fit the waistline of the wearer. A functional "capability" of belt loops on the subject merchandise to support a belt for the purpose of holding up a garment clearly, from all of the evidence adduced, is neither needed nor intended.

Plaintiff's witness, Leonard Jarva,[1] when asked the reason for affixing belt loops to the waistband, testified:

> "It gives people the option to wear a belt or not wear a belt as they see fit." R. 41.

In answer to the question as to whether "two front belt loops [would be] sufficient to enable a wearer to wear a belt with a garment" the witness answered:

> "In most cases, yes." R. 42.

The plaintiff therefore contends that the loops are functional in character because of their capability to hold the belt in place when it might be worn as an ornament. Mr. Jarva's opinion that two loops in the front of the subject merchandise would hold a belt in place "in most cases" is contradicted by the credible evidence of defendant's witness, Charles Contreri.[2] In response to the interrogation by the court as to whether the two belt loops would hold the belt in place, when it was worn as an ornamental article, the witness replied:

> "[They] would hold it in place in the front but it wouldn't stay in the back." R. 65.

In evaluating the functional capability of the two belt loops on the front of the subject merchandise in connection with his experience and expertise in designing women's garments, the witness testified:

> "If I were designing it and making that particular garment, I would never [use only two loops], with the intent of using a belt even as an ornament, because it would never stay." R. 65.

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[1] Former General Merchandise Manager of K-Mart Apparel Corporation.

[2] Associate professor at the Fashion Institute of Technology and Design in New York and a designer of women's clothes.

This court is mindful of the test determining "functionality" enunciated by our appellate court in *The Ferriswheel* v. *United States,* 68 CCPA —, C.A.D. 1260, 644 F.2d 865 (1981):

> "It is functional capability, together with the appropriateness of that function to the garment, which determines whether or not it is functional."

In the instant action the two belt loops on the subject merchandise have not been shown "capable" of holding a belt in place either for the purpose of holding up the garment or for the purpose of holding it (the belt) in place when worn as an ornament. On the contrary, the evidence supports the finding that the purpose of the two belt loops is to simulate the appearance of jeans on which a belt is required or may be worn.[3]

The presumption of correctness attached to the classification of the subject merchandise by the District Director of Customs has not been overcome. The court, therefore, concludes that the plaintiff has not sustained its dual burden of proof in establishing (1) that the classification of the subject merchandise as made by the District Director of Customs is in error and (2) that the subject merchandise should be properly classified under item 382.3347, TSUS, as non-ornamented wearing apparel. *United States* v. *New York Merchandise, Inc.,* 58 CCPA 53, C.A.D. 1004, 435 F.2d 1315 (1970).

Accordingly, judgment herein must be entered for the defendant and the above-entitled action, dismissed.

(Slip Op. 82–119)

THE TIMKEN COMPANY, PLAINTIFF *v.* UNITED STATES, MALCOLM BALDRIGE, SECRETARY OF COMMERCE; LIONEL H. OLMER, UNDERSECRETARY FOR INTERNATIONAL TRADE ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE; LARRY BRADY, ASSISTANT SECRETARY FOR INTERNATIONAL TRADE ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE; GARY N. HORLICK, DEPUTY ASSISTANT SECRETARY FOR IMPORT ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE; LEONARD M. SHAMBON, DIRECTOR, OFFICE OF COMPLIANCE, INTERNATIONAL TRADE ADMINIS-

[3] Testimony of Defendant's witness, Charles Contreri, R. 57.

TRATION, UNITED STATES DEPARTMENT OF COMMERCE; JOHN KUGELMAN, DIRECTOR, ANTIDUMPING ORDER COMPLIANCE DIVISION, INTERNATIONAL TRADE ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE; J. LINNEA BUCHER, COMPLIANCE OFFICER, ANTIDUMPING ORDER COMPLIANCE DIVISION, INTERNATIONAL TRADE ADMINISTRATION, UNITED STATES DEPARTMENT OF COMMERCE, DEFENDANTS, and NTN BEARING CORPORATION OF AMERICA, INTERVENOR

Court No. 82-6-00890

Before MALETZ, *Judge.*

Opinion and Order

(Dated December 22, 1982)

Eugene L. Stewart, Terence P. Stewart and *Robert E. Ruggeri* for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch (*Velta A. Melnbrencis* on the briefs), for the defendants.

Barnes, Richardson & Colburn (*James H. Lundquist, Robert E. Burke* and *Edmund Maciorowski* on the briefs) for intervenor NTN Bearing Corporation of America.

MALETZ, *Judge:* This matter is before the court on plaintiff's motion for a preliminary injunction.[1] On June 25, 1982 plaintiff The Timken Company (Timken) filed the present action challenging an administrative review conducted by the International Trade Administration of the Department of Commerce (ITA) pursuant to section 751 of the Trade Agreements Act of 1979, 19 U.S.C. § 1675 (Supp. IV 1980). As a result of that review an earlier antidumping duty order issued on August 18, 1976 was revoked. *See* 47 Fed. Reg. 25757 (1982).

The gravamen of Timken's complaint is that in conducting its section 751 review the ITA failed to consider certain information submitted by Timken during the administrative review process. In addition, Timken complains that the ITA failed to make certain adjustments to the price of the imported merchandise.

Besides seeking an order from this court finding that the ITA's section 751 review is unsupported by substantial evidence, Timken requests injunctive relief *pendente lite* enjoining the liquidation of entries of the subject merchandise—tapered roller bearings—manufactured by NTN Toyo Bearing Co., Ltd. (NTN) and imported by intervenor NTN Bearing Corporation of America (NBCA) since

[1] In addition to its motion for a preliminary injunction plaintiff has filed a motion in limine to have certain affidavits held inadmissible and a motion to exclude an affidavit. Generally, a court may in the exercise of its sound discretion grant or deny a preliminary injunction on the basis of affidavits. *Ross-Whitney Corp.* v. *Smith Kline & French Laboratories,* 207 F.2d 190, 198 (9th Cir. 1953); 7 J. Moore, W. Taggart & J. Wicker, Moore's Federal Practice ¶ 65.04[3] (2d ed. 1982). This is true, for example, where there are no controverted facts, *SEC* v. *Frank,* 388 F. 2d 486 (2d Cir. 1968); or in instances of extreme urgency, *Carter-Wallace, Inc.* v. *Davis-Edwards Pharmacal Co.,* 433 F. 2d 867 (2d Cir. 1971).

In the present case, however, there are many disputed factual issues. More importantly, intervenor had nearly three months within which to prepare the testimony of its affiants for presentation at the hearing on the preliminary injunction. Accordingly, plaintiff's two motions are granted.

April 1, 1978. A temporary restraining order was granted on June 25, 1982, and Timken has now moved for a preliminary injunction.

For the reasons that follow, the court concludes that Timken has failed to demonstrate the requisite harm necessary for issuance of an injunction. Its motion is, accordingly, denied.

In order to prevail on a motion for a preliminary injunction the petitioner must show (1) that there is a substantial likelihood of success on the merits; (2) that without the relief requested the petitioner will be irreparably injured; (3) that the issuance of the relief requested will not substantially harm other interested parties; and (4) that the public interest would be served by the relief requested. *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958). *See also S. J. Stile Associates, Ltd.* v. *Snyder,* 646 F.2d 522 (CCPA 1981); *Washington Metropolitan Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841 (D.C. Cir. 1977).

In view of the stay pending appeal which was issued by this court in *Brother Industries Ltd.* v. *United States, — CIT —,* Slip Op. 82-50 (June 28, 1982), and given the identity of issues presented in that case and the present one, considerations of comity lead the court to conclude that Timken has satisfied the first of the four *Virginia Petroleum* criteria, i.e., likelihood of success on the merits.[2] However, turning to the second of those criteria—a showing of irreparable injury in the absence of injunctive relief—Timken has failed to make the requisite showing.

At the September 22, 1982 hearing on Timken's motion John Fellows, vice president of marketing for Timken, testified as to the injury being incurred by Timken. While Mr. Fellows addressed at length the question of injury allegedly caused by imported roller bearings, his testimony was in large part conclusory, speculative and based on hearsay.

The crux of the Fellows' testimony was that Timken had lost business to NTN. His testimony was based on (1) internal reports and market research data prepared by his subordinates and (2) discussions he had had with Timken customers who told him that they were now purchasing NTN roller bearings because of their comparatively lower price. The declarants of these hearsay statements never testified, nor were the reports ever produced or offered at the hearing.[3]

At the hearing Mr. Fellows testified at length about his responsibilities as vice president of marketing, focusing primarily on how he kept himself informed on the state of competition in the U.S. roller bearing market. He explained that his general managers and group managers informed him monthly about Timken's competition, and how Timken's market research group, which Mr. Fellows supervises, compiled and analyzed this information. He further tes-

[2] The criteria employed in issuing a stay pending appeal are substantially identical to those used in issuing a preliminary injunction. *See, e.g., Reserve Mining Co.* v. *United States,* 498 F.2d 1073 (4th Cir. 1974).

[3] Timely objection was made to Mr. Fellows' testimony on the basis of hearsay and lack of a proper foundation. *See* Fed. R. Evid. 802, 612.

tified that as part of his duties he kept abreast of the competitive market situation through direct telephonic contact with Timken's customers.

Three direct customer contacts were discussed by Mr. Fellows at the hearing. One contact was allegedly made with Ford Motor Co. as recently as one month prior to the hearing. Regarding the Ford account Mr. Fellows testified that Timken had lost more than one million dollars in sales as a consequence of lower priced NTN roller bearings. The witness further testified that he had determined that Timken's loss of sales to NTN was attributable to the latter's lower prices based on direct statements to that effect by Ford Motor executives and purchasing managers. As to two other Timken customers, General Motors and Caterpillar Tractor Co., Mr. Fellows' testimony was essentially the same: as explained to him by representatives of both General Motors and Caterpillar, Timken had lost sales to NTN solely because of NTN's comparatively lower prices.

In response to a hearsay objection to this portion of Mr. Fellows' testimony, Timken's offer of proof was that the witness was merely explaining what he did in performing his duties with Timken. On the basis of this offer of proof the objection was overruled. Now, however, in its post-hearing memoranda Timken attempts to use that testimony to prove irreparable harm to it. Thus, taking Mr. Fellows' testimony concerning telephone conversations with Timken customers who allegedly told Mr. Fellows that they were buying NTN roller bearings because of their lower price, Timken attempts to offer those hearsay statements to prove the truth of the matter asserted by those customers. Given its hearsay character, however, that testimony could only be allowed for the limited purpose of explaining what the witness did in his job with Timken and not for the expanded purpose of proving the truth of the matters contained therein.

In addition to this hearsay testimony, Timken price lists were introduced which show that during 1979, 1980 and 1981 Timken increased its prices for roller bearings. Although it is disputed to what extent, if any, these price increases outpaced the producer price index, the undisputed fact remains that Timken did raise its roller bearing prices during a period in which it claims it is suffering continuing injury at the hands of NTN. These price increases have unquestionably contributed to any price differentials which may exist between NTN roller bearings and comparable Timken products, thereby seriously straining any causal link between irreparable harm to Timken and the business conduct of NTN. Thus, other than his own conclusory statements to that effect, the testimony of Mr. Fellows—the keystone of Timken's proof of injury—failed to establish alleged pricing differentials or loss of sales attributable to NTN.

When questioned on cross-examination about the economic impact of the 1979 liquidation of a number of NTN roller bearing entries, Mr. Fellows testified that he believed that injury had resulted because it gave NTN "more confidence" to continue to price at an unfairly lower price. Mr. Fellows did not furnish any support for this speculation, however.

Finally, although Timken asserts that it has suffered an 18 percent decline in sales and a 50 percent drop in profits during the first six months of 1982, it is conceded that a substantial number of Timken's customers are domestic automakers who themselves, for a period of years, have been faced with a depressed domestic market. This factor necessarily has had a direct economic impact on the volume of Timken's roller bearing sales in the United States.

In summary, nowhere in the record has Timken established by sufficiently probative evidence that its declines in sales and profits are causally related to NTN business activities in the United States roller bearing market. Additionally, minimal and insufficient proof has been presented that loss of business or other irreparable harm will result if the liquidation of NTN's roller bearing entries is not enjoined. *Compare S. J. Stile Associates,* 646 F.2d at 525 n. 6 (affidavit describing cutomer's telephone conversation and to which two customers' letters were attached insufficient to prove irreparable harm where authors of letters did not testify).

Denial of injunctive relief is proper where there is no clear showing of irreparable injury. *Berrigan* v. *Norton,* 451 F.2d 790, 793 (2d Cir. 1971). As the Court of Customs and Patent Appeals (a predecessor of the Court of Appeals for the Federal Circuit) instructed in *S. J. Stile Associates:*

> Only a viable threat of serious harm which cannot be undone authorizes exercise of the court's equitable power to enjoin before the merits are fully determined. * * * A preliminary injunction will not issue simply to prevent a mere possibility of injury, even where prospective injury is great. A presently existing, actual threat must be shown.

Id. at 525 (citations omitted). In view of the speculative nature of the proof presented in this case, the court must conclude that Timken has not made a showing of imminent irreparable harm sufficient to warrant the issuance of a preliminary injunction.

In the last analysis, to grant a preliminary injunction in circumstances such as those presented here would effectively result in the routine, if not automatic granting of injunctions in every case where entries of merchandise subject to section 751 review are about to be liquidated. As has been repeatedly stressed by the courts, a preliminary injunction is "an extraordinary and drastic remedy which should not be routinely granted." *Medical Society of New York* v. *Toia,* 560 F.2d 535, 538 (2d Cir. 1977). *See also Zenith Radio Corporation* v. *United States,* 4 CIT —, Slip Op. 82-105 (Nov.

18, 1982). Moreover, in empowering this court to issue injunctions restraining liquidation of entries while litigation is pending, the Senate Finance Committee emphasized that

> The issuance of injunctive relief is truly an extraordinary measure and that the relief should not be granted in the ordinary course of events.

S. Rep. No. 249, 96th Cong., 1st Sess. 253 (1979).

Accordingly, for all the foregoing reasons, Timken's motion for a preliminary injunction is denied.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 23, 1982.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P82/205	Maletz, J. December 16, 1982	International Seaway Trading Corp.	74-4-01066	Item 700.60 20%	Item 700.70 15%, 13%, 12%, 10%, 9%, or 7.5%	International Seaway Trading Corp. v. U.S. (C.D. 4773)	Portland (Oreg.) Footwear
P82/206	Boe, J. December 20, 1982	RCA Corporation	81-8-01136	Item 685.40 5.5% (video cassette recorder) Item 720.18 $1.125 each + 16% (clock/timer)	Item 685.40 5.5% (entirety)	Texas Instruments, Inc. v. U.S., Slip Op. 81-31 (CIT 4/17/81), off'd 3/25/82	Los Angeles Video cassette recorders which contain digital clock/timers; entireties
P82/207	Watson, J. December 21, 1982	Algesco, Ltd.	80-9-01429	Item 700.60 20% Appraised on basis of American selling price at $7.90 or $7.75 per pair less 2%, net, packed	Item 700.70 7.5% Properly appraised on basis of export value at invoiced unit value Difference in duties is $73,265.43; 35% of difference to be refunded to plaintiff; refund due plaintiff is $25,642.91	Agreed statement of facts	Boston Ladies footwear (article No. 17-6626)
P82/208	Watson, J. December 21, 1982	Kombi, Ltd.	79-5-00790	Item 704.85 32.5% + 25¢ per lb.	Item 734.99 9%	Agreed statement of facts	Seattle Glove liners

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/669	Re, C.J. December 16, 1982	Royal London Ltd., Div. of Globe Novelty House	74-7-01859, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/670	Re, C.J. December 16, 1982	Toshiba America Inc.	74-3-00665, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Electrical articles
R82/671	Re, C.J. December 16, 1982	YKK Zipper (ILL), Inc.	75-1-00020, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Not stated
R82/672	Re, C.J. December 16, 1982	YKK Zipper (ILL), Inc.	75-1-00321	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/673	Watson, J. December 16, 1982	John A. Conkey et al.	292957-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Wool hooked rugs, etc.
R82/674	Watson, J. December 16, 1982	Harpers International, Inc., et al.	R59/8049, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Binoculars
R82/675	Watson, J. December 16, 1982	Jake Levin & Son, Inc.	R62/14673, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Kansas City (St. Louis) Not stated
R82/676	Watson, J. December 16, 1982	J. C. Penney	R60/1491, etc.	Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Women's sweaters
R82/677	Watson, J. December 16, 1982	Texas Instruments Incorporated	81-12-01767	Export value	$62.50 each net packed (including allowance of $10.521 each under item 807.00)	Agreed statement of facts	Houston Calculators
R82/678	Watson, J. December 16, 1982	Topp Electronics, Inc.	79-8-01324	Constructed value	Values specified on entry papers by liquidating officer excluding one-half of amount added for assists as set forth on schedule attached to decision and judgment	Agreed statement of facts	Miami Not stated
R82/679	Watson, J. December 16, 1982	Topp Electronics, Inc.	80-10-01585	Constructed value	Values specified on entry papers by liquidation officer excluding one-half of amount added for assists as set forth on schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Not stated

R82/680	Re, C.J. December 20, 1982	Chori America, Inc.	73-8-02131, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/681	Re, C.J. December 20, 1982	Chori America, Inc.	75-11-02862, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/682	Re, C.J. December 20, 1982	Margit Import	73-6-01385	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/683	Re, C.J. December 20, 1982	Men's Wear International Inc.	78-11-01977	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R82/684	Watson, J. December 20, 1982	Providence Import Co., Inc.	R64/6467	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Boston Oval tube rugs
R82/685	Watson, J. December 20, 1982	Providence Import Co., Inc.	R66/5299, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia
R82/686	Watson, J. December 20, 1982	Reedy Forwarding Co.	R60/8915	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Miami Wool hooked rugs
R82/687	Watson, J. December 20, 1982	Shalom & Co.	283042-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Binoculars

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/688	Watson, J. December 20, 1982	Shalom & Co.	R66/980, etc.	Export value	F.o.b. unit prices plus 20% of difference between f.o.b. unit prices and appraised values (schedule A radios) appraised unit values less 7.5% thereof, net packed (schedule B radios)	Agreed statement of facts	New York Transistor radios, described on schedules A and B attached to decision and judgment, accessories and parts; entirety
R82/689	Watson, J. December 20, 1982	Wilmington Shipping Co.	R65/2723	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Wilmington, N.C. Tube mats
R82/690	Watson, J. December 20, 1982	W. R. Zanes & Co. et al.	296062-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Wool hooked rugs, sewing machine heads, etc.
R82/691	Watson, J. December 20, 1982	W. R. Zanes & Co. et al.	R60/17183, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New Orleans Wool hooked rugs, etc.
R82/692	Watson, J. December 20, 1982	W. R. Zanes & Co. et al.	R61/2989, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Oval tube rugs
R82/693	Watson, J. December 20, 1982	W. R. Zanes & Co. et al.	R62/5066, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Houston Oval tube rugs, etc.

R82/694	Re, C. J. December 21, 1982	Marubeni America Corporation	75-11-02883	Export value (merchandise covered by entries followed by letter "A" on schedule attached to decision and judgment) United States value (merchandise covered by entries followed by letter "B")	Equal to unit values found by appraising customs official, less ocean freight, marine insurance and any nondutiable charges, and without additions for currency fluctuation ("A" merchandise) Equal to appraised values less any additions made for currency fluctuation, and less 10%; or invoiced unit prices, less nondutiable charges, whichever value is higher ("B" merchandise)	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Not stated
R82/695	Re, C. J. December 21, 1982	Marubeni Iida (America), Inc. Marubeni America Corp.	74-2-00481	Export value (merchandise covered by entries followed by letter "A" on schedule attached to decision and judgment) United States value (merchandise covered by entries followed by letter "B" or "C")	Equal to unit values found by appraising customs official, less ocean freight, marine insurance and any nondutiable charges, and without additions for currency fluctuation ("A" merchandise) Equal to appraised values less additions for currency fluctuation, and less 10%; or invoiced unit prices, less nondutiable charges, whichever value is higher ("B" or "C" merchandise)	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Miami; New York not stated
R82/696	Re, C.J. December 21, 1982	Mitsui & Co. (USA), Inc.	73-7-10765	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Houston; Detroit; Chicago; New Orleans; New York; San Francisco; Los Angeles; Norfolk; Philadelphia Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R82/697	Re, C.J. December 21, 1982	Nichimen Co., Inc.	74-6-01435	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles; Galveston; San Francisco; New York; Charleston; Houston; Savannah; New Orleans; Philadelphia; Miami; Cleveland; Seattle; Mobile; Baltimore; Jacksonville; Portland (Oreg.); Boston Not stated
R82/698	Watson, J. December 21, 1982	Mitsubishi International Corporation	82-6-00830	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Houston Footwear
R82/699	Watson, J. December 21, 1982	National Silver Co.	R68/14543, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Bedford (Boston) Stainless steel flatware
R82/700	Watson, J. December 21, 1982	Nipkow & Kobelt	R58/23332, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Silk fabric
R82/701	Watson, J. December 21, 1982	Providence Import Co.	R62/12111, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Oval tube rugs, etc.
R82/702	Watson, J. December 21, 1982	Providence Import Co.	R64/20025, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Oval tube rugs, etc.

R82/703	Watson, J. December 21, 1982	Rugby International Corp.	R65/1224, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Tube mats
R82/704	Watson, J. December 21, 1982	Rugby Rug Mills, Inc.	R59/4906, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Wool tube mats, etc.

Appeals To U.S. Court of Appeals for the Federal Circuit

APPEAL 83-603—COMMITTEE TO PRESERVE AMERICAN COLOR TELEVISION (A.K.A. COMPACT) AND THE IMPORTS COMMITTEE, TUBE DIVISION, ELECTRONIC INDUSTRIES ASSOCIATION *v.* UNITED STATES—28 USC 1581 (i) (RESIDUAL)—Appeal from court decision of November 8, 1982, (not published) denying motion for leave to intervene as plaintiffs, filed by the Industrial Union Department, AFL-CIO, et al. on December 10, 1982.

APPEAL 83-605—SWIFT INSTRUMENTS INC., *v.* THE UNITED STATES—Classification (Microscopes)—Appeal from Slip Op. 82-68 filed on December 9, 1982.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *December 29, 1982.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the matter of

CERTAIN CUPRIC HYDROXIDE FORMULATED FUNGICIDES AND CUPRIC HYDROXIDE PREPARATIONS USED IN THE FORMULATION THEREOF } INVESTIGATION No. 337-TA-128

Notice of Commission Decision Not To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the presiding officer's initial determination terminating Calabrian Chemical Co. as a respondent in the above-captioned investigation. Accordingly, as of December 20, 1982, the initial determination, became the Commission's determination with respect to this matter.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982; to be codified at 19 C.F.R. §§ 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On November 4, 1982, complainant Kocide Chemical Corp., and respondent Calabrian Chemical Corp. ("Calabrian") jointly moved (Motion No. 128-13) to terminate the Commission's investigation with respect to Calabrian. On December 3, 1982, the presiding officer granted Motion No. 128-13 and terminated Calabrian as a respondent in the investigation.

Pursuant to rule 210.53(h)(2), an initial determination of the presiding officer under rule 210.53(c) becomes the determination of the Commission fifteen (15) days from the date of service, unless the Commission orders review of the initial determination. As pointed out by the presiding officer in Order No. 21, rulings with respect to motions to terminate a respondent pursuant to rule 210.51(c) are initial determinations under rule 210.53. Rule 210.53 controls over any language to the contrary in rule 210.51(c)(2).

Having examined the record in this investigation, including Motion No. 128-13, the papers filed in connection therewith, and the initial determination of the presiding officer, the Commission finds no grounds for review of the initial determination.

Copies of the nonconfidential version of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0375.

By order of the Commission.

Issued: December 20, 1982.

KENNETH R. MASON,
Secretary.

Investigation No. 731-TA-94 (Final)

BICYCLE TIRES AND TUBES FROM TAIWAN

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: December 7, 1982.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from Taiwan of bicycle tires and tubes, provided for in items 772.48 and 772.57 of the Tariff Schedules of the United States, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. § 1673), the United States International Trade Commission hereby gives notice of the institution of Investigation No. 731-TA-94 (Final) under section 735(b) of the act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in the case on or before February 8, 1983, and the Commission will notify the Department of Commerce of its final injury determination by April 5, 1983 (19 CFR § 207.25).

FOR FURTHER INFORMATION CONTACT: Jim McClure, Supervisory Investigator, Office of Investigations, U.S. International Trade Commission, telephone 202-523-0439.

SUPPLEMENTARY INFORMATION:

Background.—On June 14, 1982, the Commission notified the Department of Commerce, on the basis of the information developed during the course of its preliminary investigation, that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of alleged LTFV imports of bicycle tires and tubes from Taiwan. The preliminary investigation was instituted in response to a petition filed on April 30, 1982,

by counsel for Carlisle Tire & Rubber Co., the sole domestic producer of bicycle tires and tubes.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on February 14, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m., on March 1, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 18, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on February 22, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 25, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Post hearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982)

and must be submitted not later than the close of business on March 8, 1983.

Written submission.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 8, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR § 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

By order of the Commission.

Issued: December 20, 1982.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN TREADMILL JOGGERS	Investigation No. 337-TA-134

Notice of Change of the Commission Investigative Attorney

Notice is hereby given that as of this date, Samuel Bailey, Jr., Esq. of the Unfair Import Investigations Division will be the Commission Investigative Attorney in the above-cited investigation instead of John Milo Bryant, Esq.

The Secretary is requested to publish this notice in the Federal Register.

Dated: December 16, 1982.

DAVID I. WILSON,
Chief,
Unfair Import Investigations Division.

Index

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